Supreme Court, U.S.
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In the

Supreme Court of the United States

ALBERT A. RAPOPORT,

Petitioner,

v.

THE FLORIDA BAR,

Respondent.

Petition for a Writ of Certiorari to the
Supreme Court of Florida

PETITION FOR A WRIT OF CERTIORARI

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46 pp

QUESTIONS PRESENTED

1. In *Sperry v. Florida ex rel. Florida Bar*, 373 U.S. 379 (1963), this Court held that a federal statute and regulation that explicitly authorized practice before the United States Patent Office pre-empted state law, and that under federal law Florida may not prohibit within the State tasks which are incident to the preparation and prosecution of patent applications. Likewise, a federal statute and regulation explicitly authorizes practice before the Securities Exchange Commission. Can the State of Florida, consistent with the Supremacy Clause, enjoin within the State of Florida, federal practice and tasks which are incident to the preparation and prosecution of federal securities arbitrations under the Securities Exchange Act?

2. This Court has over and over again held that under the Federal Arbitration Act contracts requiring securities law arbitrations, conducted under the Rules of the National Association of Securities Dealers (NASD) and the New York Stock Exchange (NYSE) pre-empts state law, and they must be rigorously enforced according to the contract terms. Can the State of Florida, consistent with the Federal Arbitration Act and the Supremacy Clause, enjoin arbitration practice by qualified attorneys as defined by arbitration agreements approved by the NASD and NYSE within the State of Florida?

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Florida Daily Business Breeze, March 24, 2003, cover story, "*Down the chute, The Florida Supreme Court springs a trap*

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Opinions Below

The Florida Supreme Court decision in *The State Bar v. Rapoport* SC01-73 is set forth in the Appendix. The official report is listed at 845 So.2d 874 (2003).

Jurisdiction

The decision on which certiorari is requested was entered on February 20, 2003. Rehearing was denied on May 6, 2003. Justice Anthony Kennedy granted an extension to file for certiorari review to August 25, 2003.

The statutory provision for this Court's jurisdiction is 28 U.S.C. § 1257 (2), which provides for an appeal from a final judgment of the highest court of a state when the validity of a challenged state statute is sustained as not in conflict with federal law.

Relevant Provisions

See Appendix for text:

Preamble to Constitution
Article I § 8. Commerce Clause
Article VI, Section 2. Supremacy Clause
First Amendment
5 U.S.C. § 500. Administrative practice; general provisions
17 CFR Sec. 201.102 Appearance and practice before the Commission

Statement

Petitioner Albert A. Rapoport has been a member in good standing of the Bar of the District of Columbia for almost 50 years, and a member in good standing of

the bar of this Honorable Supreme Court for 44 years. Petitioner is a veteran of World War II and the Korean War. Petitioner and his wife reside in Florida. Petitioner is not a member of the Florida Bar.

Petitioner has vast experience as a stock-broker. Petitioner has been licensed as a Series 7 broker.[1] Petitioner has been certified as an arbitrator and mediation by the NASD and NYSE. Petitioner because of his experience working as an attorney, Series 7 broker/dealer, and arbitrator is particularly well qualified to represent investors in securities arbitrations. Petitioner limits his practice to federal securities arbitrations before the NASD and NYSE.

The Florida Bar filed a petition for an injunction claiming Petitioner was engaged in the unlicensed practice of law (UPL). This petition was not filed because any client complained against petitioner. The petition alleged Petitioner was engaged in the unlicensed practice of law because he (1) represents parties in Florida in securities arbitration proceedings by entities such as the American Arbitration Association, the National Association of Securities Dealers, and the New York Stock Exchange; and (2) advertises his securities arbitration services in the Fort Lauderdale Sun-Sentinel. The Florida Supreme Court issued an order to show cause, and referred the matter to a referee for determination of any questions of fact.

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[1] The Series #7 General Securities Registered Representative Examination qualifies an individual to sell any type of security. The exam is administered by the National Association of Securities Dealers at test sites throughout the United States. The exam consists of 250 multiple questions, divided into two three hour periods. The exam subjects tested are Equity Securities, Debt Securities, Options, Trading Markets, Customer Accounts, New Issues, Investment Companies, Taxes and Tax Shelters, Regulations, and Analysis.

While representing himself, Petitioner requested that the referee continue his case since he had undergone three-vessel coronary artery bypass surgery, was still suffering from cardiac arrhythmias, and was under instructions from his doctor to avoid all undue stress. A copy of his doctor's instructions was attached to the motion. His request for a continuance was denied. Petitioner asked that the referee reconsider his decision and permit him an opportunity to recover from his surgery so that he could "fully and properly prepare his response" to the Bar's motion for summary judgment. Petitioner asserted that there were material issues of fact in dispute and that he should be available in approximately one month. His request was denied. At no time did the referee provide any hearing. After the referee denied both requests for a continuance, the referee requested an extension from the Florida Supreme Court based on Petitioner's illness, only to file his decision. The Florida Supreme Court granted the request and extended the time to file the referee's report.

The referee in his findings of fact concluded that (1) Petitioner is a nonlawyer in Florida and cannot operate a law practice or engage in the general practice of law in Florida; (2) Petitioner has engaged in the practice of law by giving legal advice and consultation to clients, by drafting, signing, and filing securities arbitration claims for clients, and by representing clients in securities arbitration proceedings; (3) no federal or state law authorizes Petitioner as a nonlawyer to provide legal services and advice in securities arbitration matters; (4) Florida maintains its substantial interest and authority to prohibit UPL to protect the public; (5) Petitioner has advertised his availability to represent parties in securities arbitration proceedings; and (6) Petitioner has engaged in Unauthorized Practice of Law (UPL) and is subject to injunction.

Petitioner argued to the referee and later to the Florida Supreme Court that the Federal Arbitration Act, 9 U.S.C. § 1 — 307 (2000), (FAA) preempts state law and that Florida has no authority to forbid an attorney from acting in Florida for parties in federal securities matters.

In *Sperry v. Florida ex rel. Florida Bar*, 373 U.S. 379 (1963) this Honorable Court held that Florida could not enjoin a nonlawyer registered to practice before the U.S. Patent Office from preparing and prosecuting patent applications in Florida because a federal statute and Patent Office regulations authorized the practice. This Court held "the law of the State, though enacted in the exercise of powers not controverted, must yield when incompatible with federal legislation." *Id.* at 384 (citing *Gibbons v. Ogden*, 9 Wheat 1, 211.) This Court explained "A State may not enforce licensing requirements which though valid in the absence of federal regulation, give the State's licensing board a virtual power of review over the federal determination that a person or agency is qualified and entitled to perform certain functions, or which impose upon the activity sanctioned by federal license additional conditions not contemplated by Congress." *Id.* at 385. "No State law can hinder or obstruct the free use of a license granted under an Act of Congress." *Ibid.* (citing *Pennsylvania v. Wheeling & B. Bridge Co.*, 13 How. 518, 566).

As in patent practice, likewise, there is in federal securities law a statute and regulation that explicitly authorizes all attorneys in good standing to practice this federal law. *See* 5 U.S.C. § 500 (practice before federal administrative agencies); 17 CFR Sec. 201.102 Appearance and practice before the (SEC) Commission.

The Florida Supreme Court decision incorrectly holds there is no federal authorization for non-Florida licensed counsel to appear in federal securities arbitrations in Florida, and it totally disregards this Court's decision in *Sperry v. Florida ex rel. Florida Bar*, 373 U.S. 379 (1963). *Sperry* is a mirror image of this case. The Florida Supreme Court has refused to defer to the Supremacy Clause and to follow this Court's precedent.

Additionally, the Federal Arbitration Act (FAA) rests on the authority of Congress to enact substantive rules under the Commerce Clause. Petitioner argued this Honorable Court has again and again held that under the Federal Arbitration Act, that contracts requiring securities law arbitrations, conducted under the National Association of Securities Dealers (NASD) and the New York Stock Exchange (NYSE) pre-empt state law, and must be rigorously enforced according to the contract terms.

Petitioner argued the Florida Supreme Court was obligated to follow *Shearson/American Express Inc. v. McMahon*, 482 U.S. 220 (1987). *Shearson* presented two questions regarding the enforceability of predispute arbitration agreements between brokerage firms and their customers. The first is whether a claim brought under § 10(b) of the Securities Exchange Act of 1934 (Exchange Act), 48 Stat. 891, 15 U.S.C. § 78j(b), must be sent to arbitration in accordance with the terms of an arbitration agreement. The second is whether a claim brought under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 et seq., must be arbitrated in accordance with the terms of such an agreement. *Id.* at 222.

Both of these questions were answered in the affirmative, and held these questions had to be

arbitrated under the terms of the written securities law arbitration agreements. This Court reasoned,

"Since the 1975 amendments to § 19 of the Exchange Act, however, the Commission has had expansive power to ensure the adequacy of the arbitration procedures employed by the SROs. No proposed rule change may take effect unless the SEC finds that the proposed rule is consistent with the requirements of the Exchange Act,15 U.S.C. § 78s(b)(2); and the Commission has the power, on its own initiative, to "abrogate, add to, and delete from" any SRO rule if it finds such changes necessary or appropriate to further the objectives of the Act, 15 U.S.C. § 78s(c). In short, the Commission has broad authority to oversee and to regulate the rules adopted by the SROs relating to customer disputes, including the power to mandate the adoption of any rules it deems necessary to ensure that arbitration procedures adequately protect statutory rights.

In the exercise of its regulatory authority, the SEC has specifically approved the arbitration procedures of the New York Stock Exchange, the American Stock Exchange, and the NASD, the organizations mentioned in the arbitration agreement at issue in this case." *Id.* at 234-35.

The arbitration procedures adopted by the NASD and the NYSE that have been approved by the SEC permit all sister-state attorneys in good standing to appear as counsel in disputes between brokerage firms and their customers. The client/broker arbitration agreements and the Uniform Submission Agreements bind the parties to these SEC approved arbitration rules. There is no restriction that only Florida licensed attorneys can appear as counsel in the NASD or NYSE

arbitration rules. (Moreover, the vast majority of these SEC approved arbitration agreements provide New York as the choice of law.)

Congress in 1990 has enacted legislation extending, not retracting, the scope of the Federal Arbitration Act. *Allied Bruce Terminix v. Dobson*, 513 U.S. 265, 271 (1995) *See* 9 U.S.C. § 15 (Congress eliminated the Act of State doctrine as a bar to arbitration. international arbitrations; 9 U.S.C. §§ 201-208 (international arbitration).

The Florida Supreme Court rejected Petitioner's pre-emption arguments and affirmed the referee. The Florida Supreme Court without a moment's analysis held, "None of the (16 cited Federal Arbitration Act) cases, however, concerns the authorization of the practice of law in securities arbitration proceedings."

Instead, the Court relied upon *Florida Bar re Advisory Opinion on Nonlawyer Representation in Securities Arbitration*, 696 So.2d 1178 (Fla. 1997). In that case, the Court held that it was the unlicensed practice of law for non-lawyers in securities arbitration proceedings to give specific legal advice and perform the traditional tasks of the lawyer at arbitration proceedings. That case, however, included a footnote that it was not meant to include or apply to attorneys licensed in other states. The Florida Supreme Court, in essence, took a case applicable to a non-lawyer, never admitted to practice anywhere and shoe-horned all non-Florida licensed attorneys in good standing appearing in federal securities arbitrations into that same non-lawyer category.

Two members of the Florida Supreme Court dissented holding that Petitioner had been denied his

fundamental right to due process, and that he was entitled to a hearing on his claims.

The Florida Supreme Court's decision has sent shockwaves in federal securities arbitrations throughout the United States. *See* ABA E-Journal, May 16, 2003 "*Out-Of-State Insecurity, Florida Ruling on Federal Securities Arbitration Cases Puts Lawyers in Limbo.*" *See Florida Daily Business Breeze*, March 24, 2003, cover story, "*Down the chute, The Florida Supreme Court springs a trap door on out-of-state attorneys banning them from securities cases in the state.*" This article goes on to conclude that there are only about 15 licensed attorneys in South Florida specializing in federal securities arbitrations.

This Florida "trap door" sprung on federal practice specialists is even more shocking in light of the ABA amendment's to the Model Rules of Professional Conduct. These amendments were the result of the ABA's adoption of its MJP Commission Report, *Client Representation in the 21st Century*. This report is available on the ABA's web page www.abanet.org/cpr/mjp-home.html. These amendments came after two years of Multijurisdictional Practice (MJP) hearings conducted nationally by a blue chip panel of recognized leaders of the bar. The MJP Commission reviewed testimony and opinions from virtually every arm of the organized bar. The ABA Model Rules now call for reciprocal bar admission on motion for experienced attorneys and reciprocal discipline enforcement.

Reasons For Granting The Writ

1. The Court Should Grant Certiorari Because The Florida Supreme Court's Decision Totally Disregards This Court's Decision in *Sperry*, and The State of Florida Does Not Have The Right To Trump Federal Licensing Law

This case wherein the Florida Supreme Court has adopted a parochial view rather than national presents a transcending question of federal law in this 21st Century of increased technology and attorney specialization. The Securities Exchange Act and the Securities Exchange Commission were created by Congress. The federal courts have exclusive jurisdiction of violations of the Exchange Act and regulations. 15 U.S.C. § 78aa. Just last year as a result of the Enron and WorldCom scandals, Congress has responded by passing the Sarbanes-Oxley Act of 2002 which contains new criminal and reporting provisions and gives the SEC broad new powers to regulate the conduct of attorneys who practice before it. Intertwined with this federal substantive law are the First Amendment rights to associate with counsel of choice, and right to petition for redress of grievances. Consistent with the First Amendment, Congress has authorized all American attorneys in good standing to appear before federal administrative agencies. 5 U.S.C § 500. The SEC has adopted 17 CFR Sec. 201.102 *Appearance and practice before the Commission* that authorizes all American attorneys in good standing to practice before the SEC.

Since the founding of our nation, it has been the law that "No State law can hinder or obstruct the free use of a license granted under an Act of Congress." *Pennsylvania v. Wheeling & B. Bridge Co.*, 13 How. 518, 566. *See Theard v. United States*, 354 U.S. 278

(1957)(state and federal bar are distinct and each has authority to admit or discipline its members); *Chambers v. NASCO, Inc.*, 501 U.S. 278 (1957)(a federal court has power to control admission to its bar) (citing *Ex parte Burr*, 9 Wheat. 529, 531 (1824)). *In re Ruffalo*, 390 U.S. 544, 547 (1968)(accord). Once federal admission is secured, a change in circumstances underlying state admission — such as a shift in domicile — is "wholly negligible" on the right to practice before a federal court. *See Selling v. Radford*, 243 U.S. 46, 49 (1916).

In *Sperry v. Florida ex rel. Florida Bar*, 373 U.S. 379 (1963) this Honorable Court held that Florida could not enjoin a nonlawyer registered to practice before the U.S. Patent Office from preparing and prosecuting patent applications in Florida because a federal statute and Patent Office regulations authorized the practice. This Court explained "A State may not enforce licensing requirements which though valid in the absence of federal regulation, give the State's licensing board a virtual power of review over the federal determination that a person or agency is qualified and entitled to perform certain functions, or which impose upon the activity sanctioned by federal license additional conditions not contemplated by Congress." *Id.* at 385. *Sperry* is a mirror image of this case. The State of Florida in this appeal has disregarded this Court's holding in *Sperry*, and is once again attempting to trump federal licensing law in favor of its own antiquated parochial view.

This Court should also reverse the Florida Supreme Court decision because it is diametrically opposed to decisions by federal courts that have followed this Court's precedent refusing to permit state law to trump federal licensing rules. *See In Re Desilets*, 291 F.3d 925 (6th Cir. 2002)(held lawyer properly

admitted to federal bar under the applicable rule and not admitted in the State of Michigan is not required to disgorge fees); *In Re Poole*, 222 F.3d 618, 621 (9th Cir. 2002) (federal courts have exclusive authority over members of their bar).

The decision in this case injures not only petitioner but also American citizens and commerce throughout our Union. This Court should not permit, to quote from a Florida newspaper — "*The Florida Supreme Court [to] spring a trap door on out-of-state attorneys banning them from securities cases in the state.*" *See Florida Daily Business Breeze*, *supra*. The Preamble of our Constitution states its first purpose, "We, the people of United States, in order to form a more perfect union, establish justice..." There can be no "perfect union" or "justice" when one State compels the citizens of the other 49 States to hire a Florida attorney as a condition predicate to obtain justice in a federal arbitration. To paraphrase Thomas Jefferson, it is tyrannical to compel a citizen to associate with those he chooses not. If the other 49 States follow Florida's example, the Securities Exchange Commission, the Federal Arbitration Act, the First Amendment rights, the establishment of justice, and more perfect union is a sham. This Court cannot without violating its constitutional duty permit Florida to aggrandize its powers — as it has done here — at the expense of its neighboring States and the vital interests of the People of our Union.

If Florida can lawfully act as a virtual review board for federal administrative agencies and licensing decisions as it has done here, it follows Florida can enjoin attorney practice before this Honorable Court and review this Court's decisions. If Florida can lawfully tell American citizens from 49 states who they can

associate with as counsel, it would follow Florida could tell this Honorable Court who it should hire as its law clerks. It would follow that Florida could tell Congress what laws it approves, and the President who he should appoint to his cabinet and to the Supreme Court. The magnitude of Florida's encroachment on federal law in and of itself warrants reversal or writ review.

Sixteen years ago in *Frazier v. Heebe*, 482 U.S. 641 (1987), this Court recognized, "Rules that discriminate against nonresident attorneys are even more difficult to justify in the context of federal-court practice than they are in the area of state-court practice, where laws and procedures may differ substantially from State to State. (cites omitted) There is a growing body of specialized federal law and a more mobile federal bar, accompanied by an increased demand for specialized legal services regardless of state boundaries." *Id.* at 647-48 fn.7. *Frazier* invalidated a local federal district court rule that required its members to live or maintain an office in Louisiana. This Court went on to reason that "the location of a lawyer's office has nothing what-so-ever to do with his or her intellectual ability or experience in litigating cases in Federal District Court." *Id.* at 649. This Court further held the opportunity for pro hac vice admission was inadequate because it imposes a financial and administrative burden. *Id.* at 650. *Frazier* holds the Federal District Court was not empowered to adopt the residence and office location home town preferential rules. It therefore follows, the Florida Supreme Court decision in this case is clearly erroneous, and Florida is not empowered to adopt rules preferring its own attorneys for federal securities arbitrations. As in *Frazier*, the opportunity for pro hac vice admission in federal arbitrations in Florida is inadequate because it imposes a financial and administrative burden.

This Court's reasoning 16 sixteen years ago in *Frazier* that, "There is a growing body of specialized federal law and a more mobile federal bar, accompanied by an increased demand for specialized legal services regardless of state boundaries" *Id.* at 647-49, can no longer be ignored. Desktop computers, laptops, palm pilots, email, electronic law libraries, Bill Gates and Microsoft were in their infancy when *Frazier* was decided. The American Bar Association MJP Commission's Report "*Client Representation in the 21st Century,*" www.abanet.org/cpr/mjp-home.html, *supra*, provides ample evidence of this epidemic demand for specialized legal services regardless of state boundaries, as well as the ethical obligations of the legal profession to accommodate these needs that are within the ambit of the First Amendment precious liberties to associate with counsel of choice, and to petition for redress of grievances.

This Court should also summarily, reverse the Florida Supreme Court, or grant certiorari, because the Florida decision is premised on a glaring and despicable lie. This falsehood is the "public protection" justification and presumption that the attorneys licensed in the other 49 states are not competent and they will disserve their clients. This "public protection" justification and presumption is that passing the Florida bar exam is the sole quid pro quo of competence. This badge of inherent inferiority — this "I am better than you official policy directed against citizens from other states — has no rightful place in American law or society.

Here, Florida claims petitioner who has been a lawyer in good standing for 50 years, a Series 7 licensed stockbroker, and an NASD and NYSE arbitrator and mediator is a threat to the public while practicing his federal securities arbitration specialty, and a 25 year old

attorney who passed the Florida bar exam yesterday is better qualified to appear in a federal arbitration. Virtually everyone knows that an attorney who just passed a bar exam knows little about practicing law. The quality most want in an attorney is experience. This alleged "public protection" justification for discrimination injures the public by abridging First Amendment rights. Public protection is a subterfuge for local lawyer monopoly protection.

This Florida "public protection" justification, if it were true would mean the nine members of this Supreme Court, as well as the vast majority of this Court's law clerks, who are not admitted in Florida, are not competent or qualified to perform its constitutional duties. This absurd Florida presumption of incompetence directed against other American citizens contradicts common sense and the factual findings of the ABA report *Client Representation in the 21st Century*, Recommendation 201G – factual finding that "lawyers who have been admitted to another state's bar and have practiced actively for a significant period of time without disciplinary sanction are qualified to establish a law practice in the new state, and that, for experienced lawyers, the bar examination therefore serves an unnecessary obstacle to establishing a practice in the new state." Approximately 35 states have already adopted this ABA Model of Professional Conduct, and a half-dozen more are in the process of soon adopting it. Florida has rejected it.

This Florida "public protection" presumption of incompetence illusion further contradicts this Court's precedent. *See Frazier*, 482 U.S. at 647, "We are unwilling to assume that a nonresident lawyer — anymore than a resident —would disserve his clients by failing to familiarize himself [or herself] with the [local]

rules." (quoting *Supreme Court of New Hampshire v. Piper*, 470 U.S. 274, 285 (1985)). *See Barnard v. Thorstenn*, 489 U.S. 546 (1989)(held the contention that the Virgin Islands Bar Association does not have the resources and personnel for adequate supervision of the ethics of a nationwide bar membership is not a sufficient justification for discrimination in bar admission). This "public protection" justification is further undermined by the fact that the State of Florida has approved the ABA's recommendation of reciprocal discipline enforcement. Stated differently, if a Florida citizen filed an ethics complaint against petitioner for alleged misconduct, the Florida Bar could discipline him just like any other attorney and any sanction would be reciprocally enforced.

Petitioner has been an attorney for almost 50 years, and a member of the bar of this Court for over 44 years. Petitioner has fought for an earned his First Amendment liberties with his service to our country in World War II and the Korean War. This case is not about the misconduct of an unethical attorney. Petitioner has never been sanctioned, suspended, or disbarred.[2] This Florida decision stains petitioner's reputation and life's work. This decision injures not only petitioner but American citizens everywhere. This case is about a Florida Supreme Court anachronism, in which two Florida justices have held petitioner was denied his constitutional right to due process — that dishonors this Court's precedent over 200 years that uniformly holds a state may not alter or modify a federal license. This

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[2] The Florida decision in footnote 2 mentions petitioner earlier stipulated to an injunction against practicing law unless "authorized to do so by state or federal law, statute, regulation, or decision." That decision apparently was apparently not the result of any client complaint, and it left open the question the Florida Supreme Court decided in this case.

Court should thus summarily reverse or grant this writ of certiorari.

2. The Court Should Grant Certiorari Because The Florida Supreme Court's Decision Totally Disregards The Federal Arbitration Act, and This Court's Repeated Holding That The Federal Arbitration Act Pre-Empts Conflicting State Law

This Court has over and over again held that under the Federal Arbitration Act contracts requiring securities law arbitrations, conducted under the Rules of the National Association of Securities Dealers (NASD) and the New York Stock Exchange (NYSE) pre-empts state law, and they must be rigorously enforced according to the contract terms. *Howsam v. Dean Witter Reynods*, 537 U.S. 79 (2002)(held an NASD arbitrator should apply the time limit to the underlying dispute); *Mastronbuono v. Shearson Lehman Hutton, Inc.*, 514 U.S. 52 (1995)(held arbitration is governed by what the NASD contract has to say about the arbitrability of the punitive damages claim and not state law); *Perry v. Thomas*, 482 U.S. 483 (1987)(NASD arbitration agreement preempts California law).

The basic purpose of the Federal Arbitration Act is to overcome court's refusal to enforce agreements to arbitrate. *Allied-Bruce Terminix Cos. V. Dobson*, 513 U.S. 265, 270 (1995) (citing *Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford University*, 489 U.S. 468, 474 (1989). The Federal Arbitration Act "is based upon and confined to the incontestable federal foundations of "control over interstate commerce." *Allied-Bruce*, 489 U.S. at 271. The Federal Arbitration Act pre-empts state law, and state courts cannot invalidate arbitration agreements. Id. at 272 (citing

Southland Corp. v Keating, 465 U.S. 1, 15-16 (1984). "Congress, both before and after Southland, has enacted legislation extending, not retracting the scope of arbitration. See, e.g. 9 U.S.C. §15 (eliminating the Act of State doctrine as a bar to arbitration; 9 U.S.C. § 201-209 (international arbitration." *Allied-Bruce*, 489 U.S. at 272.

In *Shearson/American Express Inc. v. McMahon*, *supra*, 482 U.S. 220 (1987), this Court in enforcing arbitrations under the NASD and NYSE stated:

"Since the 1975 amendments to § 19 of the Exchange Act, however, the Commission has had expansive power to ensure the adequacy of the arbitration procedures employed by the SROs. No proposed rule change may take effect unless the SEC finds that the proposed rule is consistent with the requirements of the Exchange Act,15 U.S.C. § 78s(b)(2); and the Commission has the power, on its own initiative, to "abrogate, add to, and delete from" any SRO rule if it finds such changes necessary or appropriate to further the objectives of the Act, 15 U.S.C. § 78s(c). In short, the Commission has broad authority to oversee and to regulate the rules adopted by the SROs relating to customer disputes, including the power to mandate the adoption of any rules it deems necessary to ensure that arbitration procedures adequately protect statutory rights.

In the exercise of its regulatory authority, the SEC has specifically approved the arbitration procedures of the New York Stock Exchange, the American Stock Exchange, and the NASD, the organizations mentioned in the arbitration agreement at issue in this case." *Id.* at 234-35.

The arbitration procedures adopted by the NASD and the NYSE that have been approved by the SEC permit all sister-state attorneys in good standing to appear as counsel in disputes between brokerage firms and their customers. The client/broker arbitration agreements and the Uniform Submission Agreements bind the parties to these SEC approved arbitration rules. There is no restriction that only Florida licensed attorneys can appear as counsel in the SEC approved NASD or NYSE arbitration rules. Such a restriction would fly in the face of 5 U.S.C. § 500 and 17 CFR Sec. 201.102.

The Florida Supreme Court's naked without any analysis, holding in this case that — "None of the cases, however, concerns the authorization of the practice of law in securities arbitration proceedings" (App.5-6) — misreads this Court's precedent interpreting the FAA. Every Federal Arbitration Act case this Court has decided concerns the practice of law in arbitration proceedings. As in its refusal to follow *Sperry*, the decision appealed simply refuses to take a careful and close look at the FAA and this Court's precedent interpreting it.

This Court should also summarily reverse or grant certiorari because of the violation of fundamental notions of due process that are required by the SEC for adopting or changing securities law arbitrations. The Securities Exchange Act of 1934, 15 U.S.C. § 78a, et seq. "requires SROs to register with the SEC and to promulgate rules and by-laws that conform with the Exchange Act. 15 U.S.C. § 78f(b), 78o-3(b). All SRO rules, policies, practices, and interpretations must be approved by the SEC prior to their implementation. 15 U.S.C. § 78s(b). Proposed rules are published in the Federal Register and are subject to public comment. See

id. Section 19 of the Exchange Act permits the SEC to approve SRO rules only if they are consistent with the requirements of the federal securities laws. *Id.* In particular, prior to approval of a proposed SRO rule the SEC must find that it is designed "to protect investors and the public interest." 15 U.S.C. § 78f(b)(5), 78o-3(b)(6). In addition, the SEC "may abrogate, add to, and delete from" the rules of an SRO as it deems necessary or appropriate if it does so in a manner consistent with the requirements of the Exchange Act. 15 U.S.C. § 78s(c). Each SRO must comply with the provisions of the Exchange Act as well as its own rules. 15 U.S.C. § 78s(g).

In sharp contrast to the SEC required notice to the public and opportunity to comment before amendment of SEC approved arbitration rules, the Florida decision here provided no prior notice or opportunity to the public to be heard when it shoe horned a decision applicable to paralegals onto to all attorneys and the SROs. *See Florida Daily Business Breeze, supra, "Down the chute, The Florida Supreme Court springs a trap door on out-of-state attorneys banning them from securities cases in the state."* Here, the decision was reached on a vital question of federal securities law affecting the entire nation in a case where petitioner had a heart attack and was twice denied a continuance, and two members of the Florida Court held violated petitioner's constitutional right to due process.

Last term in *Citizens Bank v. Alafabco, Inc.* 02-1295, (U.S. 2003) (decided June 3, 2003), this Court in a Per Curiam decision on Petition for Writ of Certiorari reversed the Supreme Court of Alabama on a FAA case similar to this case. The question presented was whether the parties' debt-restructuring agreement is "a contract evidencing a transaction involving commerce" within

the meaning of the Federal Arbitration Act (FAA). 9 U.S.C. § 2. The Alabama Supreme Court refused to enforce the arbitration agreement based on a strained interpretation of the Commerce Clause. This Court reversed holding there is a sufficient nexus with interstate commerce to make enforceable, pursuant to the FAA, an arbitration provision included in that agreement. Here, likewise, there can be no question securities law arbitrations carried out under an extensive federal regulatory scheme involve the Commerce Clause and should be interpreted and carried out under the Constitution, By-Laws, Rules, Regulations, and/or Code of Arbitration Procedure of the NASD and the NYSE.

Conclusion

Our Constitution was designed to form a more perfect union and to ensure equal justice throughout the United States. The theory of our Constitution was to provide a government of checks and balances. A healthy foot contributes to the health of a body by being healthy and by being part of a body. This Florida decision injures not only petitioner but American citizens everywhere. This decision does not follow this Court's Supremacy Clause decisions in *Sperry* and under the FAA. This Florida decision usurps federal law enacted by Congress. It infringes upon the authority of the SEC. It tramples the Commerce Clause and the sacred First Amendment rights to associate with counsel, and petition for redress of grievances. This decision is a disease that severs Florida from the rest of the United States. This disease if not cured will infect the health of Florida and spread this disease to other parts of the United States. This Court should grant review because this Court is the sole check and balance on the decision appealed. This Court has a constitutional duty to ensure

that its precedent as well as the Constitution is followed. It has not been followed here. Justice requires truth and each part of our government to perform its responsibility. It is more worthy of choice for this Court to perform its duty and grant review rather than to deny it.

For all of the foregoing reasons, this Court is respectfully requested to summarily reverse the Florida Supreme Court or to grant petitioner's request for writ of certiorari.

Date: August 25, 2003

Respectfully submitted,

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For Petitioner
Albert A. Rapoport

(Footnotes trail the end of each document)

Case No. SC01-73
Lower Tribunal No.: 199911211 (15B)

Supreme Court of Florida.

THE FLORIDA BAR,
Complainant(s),

vs.

ALBERT A. RAPOPORT,
Respondent(s).

Tuesday, May 6, 2003

Respondent's Motion for Rehearing and/or Clarification is hereby denied.

ANSTEAD, C.J., AND WELLS, PARIENTE, LEWIS, QUINCE and CANTERO, JJ., concur.

SHAW, Senior Justice, dissents.

A True Copy
Test:

Thomas D. Hall
Clerk, Supreme Court

Bh
Served:

HON. FRED TAYLOR, DIRECTOR
LORI S. HOLCOMB
JANET E. BRADFORD

AINSLEE R. FERDIE
HON. JAMES T. CARLISLE, JUDGE
JOHN ANTHONY BOGGS
BARRY W. RIGBY
R. LEE BENNETT

No. SC01-73 (Fla. 2003)

Supreme Court of Florida.

THE FLORIDA BAR,
Complainant,

v.

ALBERT A. RAPOPORT,
Respondent.

Opinion filed February 20, 2003.

Original Proceeding — The Florida Bar

John F. Harkness, Jr., Executive Director, The Florida Bar, Tallahassee, Florida; R. Lee Bennett, Chair, Standing Committee on Unlicensed Practice of Law, Tallahassee, Florida; Lori S. Holcomb, Unlicensed Practice of Law Director, The Florida Bar, Tallahassee, Florida; and Janet Bradford Morgan, Bar Counsel, Fort Lauderdale, Florida, for Complainant

Ainslee R. Ferdie of the Law Offices of Ainslee R. Ferdie, Coral Gables, Florida, for Respondent

PER CURIAM.

We have for review a referee's report finding as a matter of law that respondent, Albert A. Rapoport, engaged in the unlicensed practice of law. We have jurisdiction. See art. V, § 15, Fla. Const.

Rapoport is licensed to practice law in Washington, D.C. He is a member in good standing of the bars of the

Supreme Court of the United States and the District of Columbia Court of Appeals. He is not a member of The Florida Bar.

The Bar filed its petition for an injunction in January 2001, claiming that Rapoport was engaged in the unlicensed practice of law (UPL) because he (1) represents parties in Florida in securities arbitration proceedings by entities such as the American Arbitration Association, the National Association of Securities Dealers, and the New York Stock Exchange; and (2) advertises his securities arbitration services in the Fort Lauderdale Sun-Sentinel.[fn1] The Court issued an order to show cause on January 29, 2001. Rapoport responded to the order to show cause. Although it appeared to the Court at that time that Rapoport admitted the material allegations in The Florida Bar's petition, the Court referred the matter to a referee for determination of any questions of fact. See R. Regulating Fla. Bar 10-7.1(b)(6).

After discovery was propounded by both parties, including the Bar's request for admissions, the Bar filed a motion for summary judgment, alleging that there were no material facts in dispute.[fn2] The referee granted summary judgment, making the following findings of undisputed facts: Rapoport (1) is not a licensed Florida attorney; (2) operates a law practice in Florida and represents persons in securities arbitration matters; (3) advises clients about the legal merits of their securities arbitration claims; (4) prepares, signs, and files securities arbitration claims for his clients; (5) represents his clients in securities arbitration proceedings; (6) offers advice and representation to stockbrokers defending claims in securities arbitration; and (7) has, in the past, advertised in the Sun-Sentinel

his availability to represent persons in securities arbitration proceedings.

Based on these findings of fact, the referee concluded that (1) Rapoport is a nonlawyer in Florida and cannot operate a law practice or engage in the general practice of law in Florida; (2) Rapoport has engaged in the practice of law by giving legal advice and consultation to clients, by drafting, signing, and filing securities arbitration claims for clients, and by representing clients in securities arbitration proceedings; (3) no federal or state law authorizes Rapoport as a nonlawyer to provide legal services and advice in securities arbitration matters; (4) Florida maintains its substantial interest and authority to prohibit UPL to protect the public; (5) Rapoport has advertised his availability to represent parties in securities arbitration proceedings; and (6) Rapoport has engaged in UPL and is subject to injunction.

Rapoport does not contend that any of these material facts are in dispute. Rather, Rapoport claims that the Federal Arbitration Act, 9 U.S.C. § 1 — 307 (2000), (FAA) preempts state law[fn3] and that Florida has no authority to forbid an attorney from acting in Florida for parties in federal securities matters.

In Sperry v. Florida ex rel. Florida Bar, 373 U.S. 379 (1963), the United States Supreme Court, although acknowledging Florida's substantial interest in regulating the practice of law within the state, held that Florida could not enjoin a nonlawyer registered to practice before the U.S. Patent Office from preparing and prosecuting patent applications in Florida because a federal statute and Patent Office regulations authorized the practice. Rapoport provides a long list of federal cases concerning securities arbitration that involve

preemption of state law by the FAA.[fn4] None of the cases, however, concerns the authorization of the practice of law in securities arbitration proceedings.

Florida Bar re Advisory Opinion on Nonlawyer Representation in Securities Arbitration, 696 So.2d 1178 (Fla. 1997), is directly on point. In that case, this Court held that it was unlicensed practice of law for nonlawyers in securities arbitration proceedings to give specific legal advice and perform the traditional tasks of the lawyer at arbitration proceedings. Rapoport admittedly has engaged in the traditional tasks of the lawyer — giving of legal advice, preparing and submitting claims, representing clients in proceedings, advertising his ability to represent clients — in securities arbitration proceedings in Florida. He is a nonlawyer in Florida under Rule Regulating the Florida Bar 10-2.1(c), which provides in pertinent part:

For purposes of this chapter, a nonlawyer or nonattorney is an individual who is not a member of The Florida Bar. This includes, but is not limited to, lawyers admitted in other jurisdictions, law students, law graduates, applicants to The Florida Bar, disbarred lawyers, and lawyers who have resigned from The Florida Bar.

As a nonlawyer, Rapoport is not authorized to practice law in Florida.

Although Rapoport does not point to any material issues that are in dispute, he claims that the referee erred in entering summary judgment without holding a hearing. He points to the language of Florida Rule of Civil Procedure 1.510(c), which provides that a motion for summary judgment "shall be served at least 20 days before the time fixed for hearing."

We previously have held that a referee in a UPL case has the authority to enter summary judgment when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. See Florida Bar v. Miravalle, 761 So.2d 1049, 1051 (Fla. 2000). Furthermore, the standard of review on summary judgment orders is de novo. See Florida Bar v. Cosnow, 797 So.2d 1255, 1258 (Fla. 2001). Lastly, we are aware that rule 1.510(c) has been interpreted to require hearings on motions for summary judgments. See Kozich v. Hartford Ins. Co. of Midwest, 609 So.2d 147, 148 (Fla. 4th DCA 1992).

We deem it unnecessary to reach the issue of whether rule 1.510(c) mandates a hearing before summary judgment may be entered in a civil proceeding if there has been adequate notice and an opportunity to be heard, and the party opposing the summary judgment has failed to show that there are any material issues in dispute. Unlike other proceedings, this Court has original jurisdiction over petitions against the unlicensed practice of law. See R. Regulating Fla. Bar 10-1.1. The Court does not automatically refer UPL petitions to referees. Referral to a referee is made only if the respondent raises issues of disputed fact after we have issued an order to show cause. See R. Regulating Fla. Bar 10-7.1(b)(6) ("The court may, upon its motion or upon motion of any party, enter a judgment on the pleadings or refer questions of fact to a referee for determination.").

In this case, as noted above, referral to a referee was made after a response was filed because it appeared that Rapoport may have been asserting some disputed issues of fact. However, in the proceedings before the referee, and in the multiple pleadings filed with this Court, including Rapoport's initial brief and reply brief,

Rapoport has failed to demonstrate the existence of even a single disputed fact — much less a material one. Accordingly, Rapoport had no right to even have a referee hear The Florida Bar's petition against the unlicensed practice of law unless there were disputed issues of material fact. Once Rapoport filed his response to our order to show cause, this Court had the discretion to enter judgment on the pleadings or to refer questions of fact to a referee. See R. Regulating Fla. Bar 10-7.1(b)(6). Because there are no disputed issues of material fact raised by Rapoport, the referee's decision not to hold a hearing before entering summary judgment in this case was proper.[fn5]

Rapoport received both notice and an opportunity to be heard before this Court. There are no material issues of disputed fact, and based on Rapoport's admissions that he is engaged in representing parties in securities arbitration in this state we conclude that, as a matter of law, Rapoport is engaged in the unlicensed practice of law.

Rapoport also objects to the referee's recommended assessment of costs in the amount of $530.40. Rule Regulating the Florida Bar 10-7.1(d)(2) gives the referee discretion to recommend the assessment of costs, including the investigative costs and court reporter's fees requested in this action. Rapoport has demonstrated no abuse of discretion by the referee. Therefore, we approve the assessment of costs as recommended.

Accordingly, respondent, Albert A. Rapoport, is hereby enjoined from engaging in the practice of law in Florida, including specifically the representation of parties in securities arbitration proceedings in this state, until he is duly licensed to practice law in Florida. Judgment is

entered for The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300, for recovery of costs from Albert A. Rapoport, in the amount of $530.40, for which sum let execution issue.

It is so ordered.

ANSTEAD, C.J., and WELLS, PARIENTE, LEWIS, and CANTERO, JJ., concur.

SHAW, Senior Justice, dissents with an opinion, in which QUINCE, J., concurs.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

SHAW, Senior Justice, dissenting.

I respectfully dissent because I believe that there was a violation of Rapoport's constitutional right to due process. As Florida courts have consistently recognized, due process entitles a litigant to notice and an opportunity to be heard.[fn6]

While representing himself, Rapoport requested that the referee continue his case since he had undergone three-vessel coronary artery bypass surgery, was still suffering from cardiac arrhythmias, and was under instructions from his doctor to avoid all undue stress. A copy of his doctor's instructions was attached to the motion. When his request for a continuance was denied, Rapoport asked that the referee reconsider his decision and permit him an opportunity to recover from his surgery so that he could "fully and properly prepare his response" to the Bar's motion for summary judgment. He asserted that there were material issues of fact in dispute and that he should be available in approximately

one month.[fn7] The referee denied this motion and five days later issued an order granting summary judgment in favor of the Bar.[fn8]

The decision to grant or deny a motion for continuance is a matter of discretion that will normally not be disturbed.[fn9] In this instance, however, where it was asserted that there were material issues of fact to be resolved and a continuance was requested because of serious medical problems, I feel that it was an abuse of discretion to deny the continuance and grant summary judgment without giving Rapoport a meaningful opportunity to respond.[fn10]

The majority opinion concludes that Rapoport is not entitled to relief because he received "both notice and an opportunity to heard before this Court." I do not believe that this constitutes a sufficient remedy. As noted above, Rapoport was not given an opportunity to submit disputed factual issues before the referee, and there are no provisions which permit him to present such disputed factual issues before this Court.

The majority opinion relies heavily on the fact that the referee's findings of fact were based on Rapoport's own admissions. A litigant's right to due process is not forfeited, however, because the most damaging evidence comes from his own confession or admissions. The right to be heard is fundamental, and Rapoport has been denied this right. For the above reasons, I dissent.

QUINCE, J., concurs.

FOOTNOTES

[fn1] The petition also included an allegation that Rapoport formerly advertised as an attorney in Florida

on the American Association of Retired Persons website. However, because the Bar did not include that claim in its motion for summary judgment and the referee made no findings as to that claim, we deem it abandoned and have not considered that allegation in our disposition of this case.

[fn2] As "Appendix A" to its motion, the Bar attached this Court's unpublished order dated April 15, 1999, approving a stipulation for permanent injunction in case no. 94,049, Florida Bar v. Rapoport, 732 So.2d 329 (Fla. 1999). According to the stipulation, Rapoport agreed not to practice law in Florida unless "authorized to do so by state or federal law, statute, rule, regulation, or decision."

[fn3] The Federal Arbitration Act, 9 U.S.C. § 1 — 307 (2000), was enacted in 1925. See Pub.L. No. 68-401, 43 Stat. 883 (1925). "The Act was designed `to overrule the judiciary's longstanding refusal to enforce agreements to arbitrate,' and place such agreements `upon the same footing as other contracts.'" Volt Information Sciences, Inc. v. Board of Trustees, 489 U.S. 468, 474 (1989) (citations omitted). Securities arbitration agreements are subject to the Federal Arbitration Act. See Shearson/American Express, Inc. v. McMahon, 482 U.S. 220 (1987).

[fn4] See Doctor's Associates, Inc. v. Casarotto, 517 U.S. 681 (1996); Southland Corp. v. Keating, 465 U.S. 1 (1984); Doctor's Associates, Inc. v. Hamilton, 150 F.3d 157 (2d Cir. 1998); Ferro Corp. v. Garrison Indus., Inc., 142 F.3d 926 (6th Cir. 1998); Olde Discount Corp. v. Tupman, 1 F.3d 202 (3d Cir. 1993); Saari v. Smith Barney, Harris Upham & Co., 968 F.2d 877 (9th Cir. 1992); David L. Threlkeld & Co. v. Metallgesellschaft Ltd. (London), 923 F.2d 245 (2d Cir. 1991); Saturn Distribution Corp. v.

Williams, 905 F.2d 719 (4th Cir. 1990); Securities Indus. Ass'n v. Connolly, 883 F.2d 1114 (1st Cir. 1989); Cohen v. Wedbush, Noble, Cooke, Inc., 841 F.2d 282 (9th Cir. 1988), overruled by Ticknor v. Choice Hotels Int'l, Inc., 265 F.3d 931(9th Cir. 2001); Cent. Jersey Freightliner, Inc. v. Freightliner Corp., 987 F. Supp. 289 (D.N.J. 1997); Morrison v. Colo. Permanente Med. Group, P.C., 983 F. Supp. 937 (D.Colo. 1997); Johnson v. Hubbard Broad., Inc., 940 F. Supp. 1447 (D.Minn. 1996); Haluska v. RAF Fin. Corp., 875 F. Supp. 825 (N.D.Ga. 1994); Medika Int'l, Inc. v. Scanlan Int'l, Inc., 830 F. Supp. 81 (D.P.R. 1993); Matter of Management Recruiters Int'l, Inc. and Nebel, 765 F. Supp. 419 (N.D.Ohio. 1991); Seymour v. Gloria Jean's Coffee Bean Franchising Corp., 732 F. Supp. 988 (D.Minn. 1990); Reed v. Bear, Stearns & Co., 698 F. Supp. 835 (D.Kan. 1988); Russolillo v. Thomson McKinnon Securities, Inc., 694 F. Supp. 1042 (D.Conn. 1988); In re Pate, 198 B.R. 841 (Bankr.S.D.Ga 1996).

[fn5] The dissent asserts that Rapoport's due process rights were violated when the referee refused to continue the proceedings, even though Rapoport recently underwent heart surgery. The dissent further asserts that there were disputed issues of fact that Rapoport never had an opportunity to present to the referee. However, a review of the record demonstrates that Rapoport had multiple opportunities to raise factual disputes. The Bar's motion for summary judgment was served by mail on August 17, 2001. Rapoport's motion to halt proceedings was signed by him on August 30, raising his recent heart surgery as a basis for the request. Despite the fact that the motion for summary judgment had already been served, he did not raise any issues of fact in dispute that would have provided the referee cause to continue the proceedings. Further, after the referee denied this motion, Rapoport filed a motion to reconsider on September 10, 2001, that only made a bare

assertion that there were material issues of fact in dispute, without naming a single specific fact that was in dispute to give the referee a basis to reconsider. Perhaps most significantly, in his numerous pleadings before this Court Rapoport still does not assert that there are material issues of fact in dispute that the referee must resolve. Therefore, Rapoport has had ample opportunity to be heard. His challenge to the Bar's proceedings is one that involves issues of law and not disputed issues of fact. Hence, his due process rights have not been violated.

[fn6] See, e.g., Florida Bar v. Fredericks, 731 So.2d 1249, 1254 (Fla. 1999) ("Accordingly, because Fredericks was made aware of the conduct alleged by the Bar to be unethical and had the opportunity to be heard as to this conduct, there was no violation of due process."); Florida Bar v. Rubin, 709 So.2d 1361, 1363 (Fla. 1998) ("Prior to being found guilty of the charges at issue here, Rubin was afforded appropriate notice and a full opportunity to be heard during the final hearing before the referee. This was sufficient to satisfy the demands of due process."); see also Zauderer v. Office of Disciplinary Counsel, 471 U.S. 626, 655 (1985) (holding that where appellant was put on notice of disciplinary charges against him and was afforded opportunity to respond to board's recommendation, demands of due process were satisfied); In re McKay, 191 So.2d 1, 5 (Ala. 1966) ("An attorney must be accorded due process in . . . disciplinary proceedings, and the requirements of due process are met when the attorney is served with charges or specifications reasonably informing him of the charges against him and the attorney is thereafter accorded a hearing with an opportunity to defend.").

[fn7] The majority opinion seems to suggest that Rapoport, who was proceeding pro se at the time,

should have spelled out the disputed issues of fact in his request for a continuance. I find this reasoning disingenuous for if Rapoport was able to formulate his research and submit his issues of disputed fact, then he would not need a motion for continuance at all.

[fn8] Interestingly, after the referee denied both of Rapoport's requests for a continuance, the referee requested an extension from this Court based on Rapoport's illness. This Court granted the request and extended the time to file the referee's report until November 28, 2001.

[fn9] Florida Bar v. Lipman, 497 So.2d 1165, 1167-68 (Fla. 1986) ("It is within the sound discretion of the referee, assigned by this Court to preside over a disciplinary proceeding such as this, to grant or deny a motion for continuance. Such a ruling will not be disturbed by this Court absent a clear abuse of discretion.").

[fn10] See Greene v. Seigle, 745 So.2d 411 (Fla. 4th DCA 1999) (holding that plaintiff's due process rights were violated when the trial court granted a summary judgment motion eight days after it was filed without providing the plaintiff with a sufficient opportunity to be heard); Mondestin v. Duval Fed. Sav. & Loan Ass'n, 500 So.2d 580 (Fla. 4th DCA 1986) (holding that a party against whom a motion for summary judgment is filed is entitled to notice and a meaningful opportunity to be heard).

NYSE
The New York Stock Exchange

Department of Arbitration

Article 11
NYSE Constitution and Arbitration Rules
January 1999

Rule 614. Representation by Council

All parties shall have the right to representation by counsel at any stage of the proceedings.

NASD Manual – Code of Arbitration Procedure

Rule 10316. Representation by Counsel.

All parties to have the right to representation by counsel at any stage of the proceedings.

NASD Dispute Resolution Arbitration
UNIFORM SUBMISSION AGREEMENT

In the Matter of the Arbitration Between

Name(s) of Claimants

_____

and

Name of Respondents

_____

1. The undersigned parties hereby submit the present matter in controversy, as set forth in the attached statement of claim, answers, and all related counterclaims and/or third-party claims which may be asserted, to arbitration in accordance with the Constitution, By-Laws, Rules, Regulations, and/or Code of Arbitration Procedure of the sponsoring organization.

2. The undersigned parties hereby state that they have read the procedure and rules of the sponsoring organization related to arbitration.

3. The undersigned parties agree that in the event a hearing is necessary, such hearing shall be held at a time and place as may be designated by the Director of Arbitration or the arbitrator(s). The undersigned parties further agree and understand that the arbitration will be conducted in accordance with the Constitution, Bylaws, Rules, Regulations, and/or Code of Arbitration Procedure of the sponsoring organization.

4. The undersigned parties further agree to abide by and perform any award(s) pursuant to this

Submission Agreement and further agree that a judgment and any interest due thereon, may be entered upon such award(s) and, for these purposes, the undersigned parties hereby voluntarily consent to submit to the jurisdiction of any court of competent jurisdiction which may proceed properly enter such judgment.

5. The parties hereto have signed and acknowledged the foregoing Submission to Agreement.

_____

Claimant Name (please print)

_____

Claimant's Signature Date

_____

Claimant Name (please print)

_____

Claimant's Signature Date